

Arnold E. Brown (SBN 167679)

Email: abrown@schwabe.com

Stephen G. Sullivan (SBN 164495)

Email: ssullivan@schwabe.com

**SCHWABE, WILLIAMSON & WYATT, P.C.**

455 N. Whisman Rd., Ste. 200

Mountain View, CA 94043

Telephone: 650.396.1401

Facsimile: 650.396.1415

Brenna K. Legaard (*Admitted Pro Hac Vice*)

Email: blegaard@schwabe.com

**SCHWABE, WILLIAMSON & WYATT, P.C.**

1211 SW Fifth Avenue, Ste. 1900

Portland, OR 97204

Telephone: 503.222.9981

Facsimile: 503.796.2900

*Of Attorneys for Defendant*

*Anti-Malware Testing Standards Organization, Inc.*

**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

NSS LABS, INC.,

Plaintiff,

v.

CROWDSTRIKE, INC.; SYMANTEC  
CORPORATION; ESET, LLC; ANTI-  
MALWARE TESTING STANDARDS  
ORGANIZATION, INC; AND DOES 1-50,  
INCLUSIVE,

Defendants.

CASE NO.: 5:18-cv-05711-BLF

**DECLARATION OF DENNIS  
BATCHELDER**

1 I, Dennis Batchelder, do hereby declare and say:

2 1. I am President and Chief Executive Officer of the Anti-Malware Testing  
3 Standards Organization, Inc. (“AMTSO”). My statements herein are based on personal  
4 knowledge. If called upon as a witness, I could and would testify to the facts stated herein under  
5 oath.

6 2. In January of 2020, I invited the tester members of AMTSO to participate in a  
7 conference call and offer their thoughts and suggestions regarding how AMTSO might better  
8 support their needs and interests as testers. I told them that I would not be inviting any vendor  
9 members to participate in this telephone call so that the forum would be an opportunity for them  
10 to speak candidly without concern that their input would be heard by or shared with any vendor-  
11 members of AMTSO.

12 3. I invited NSS Labs, Inc. to participate even though it is not a member of AMTSO  
13 because I hoped that they would provide input that could be used to improve the AMTSO  
14 Testing Standard or AMTSO, and I wanted to hear what they had to say.

15 4. During the telephone call, I again assured the participating testers that their  
16 comments would not be shared with anyone not on the telephone call. I stated that “the call is  
17 not being recorded. I’m not writing things down,” and assured them that this was because “I  
18 want to have. . . a more open discussion.” ECF 119-1 at p. 25, lines 7-9/  
19

20 5. Jason Brvenik of NSS Labs attended the phone call. I have just learned that he  
21 was recording the telephone call. When I stated that the call was not being recorded, however,  
22 he did not contradict me or in any way disclose to the participating testers that he was in fact  
23 recording the telephone call.

24 6. As the declaration of Mr. Brvenik indicates, not only did NSS Labs secretly  
25 record the telephone call, it transcribed its recording and filed a copy of the transcript in this  
26 court. This transcript can now be read by any member of the public, including any vendor. I  
27 have already received phone calls from the press about it.  
28

1           7.       After I reviewed NSS Labs' filing, I contacted the testers who participated in the  
2 telephone call and told them that NSS Labs had filed a transcript of the private tester call with  
3 the Court so that anyone could read it. Testers were angry, not just at NSS Labs, but also at  
4 AMTSO for failing to protect the privacy of what I had assured them was a private conversation.  
5 One tester expressed concerns that its in-house legal department might see participating in  
6 AMTSO as not worth the legal risk as a result of these events, and might end the organization's  
7 participation in AMTSO. This event has damaged AMTSO's credibility. The loss of tester  
8 members will damage AMTSO further by depriving AMTSO of membership dues and, more  
9 importantly, of tester participation.

10           8.       NSS Labs did not offer any suggestions for improving AMTSO on the call. Mr.  
11 Brvenik criticized AMTSO on the grounds that testers were afraid to speak openly in a forum  
12 open to vendors. *Id.* at p. 25, lines 11-15. Mr. Brzenik did not request or suggest any changes  
13 to the Standard. He indicated that regardless of the Standard, he perceived no benefit to  
14 membership in AMTSO, stating that the organization "offers nothing to me except more work."  
15 ECF 119-1 at p. 24, line 2. He stated his opinion that even if AMTSO "did all of the things—  
16 right" there would still be no value to NSS Labs in participating in AMTSO because of the  
17 organization's "history." *Id.* at pp. 35, lines 1-5.

18           9.       When NSS Labs accepted my invitation to participate in this telephone call, I  
19 genuinely hoped that they intended to make requests or suggestions that I could use to strengthen  
20 the organization by enhancing its support of testers. I was even prepared to hear NSS Labs  
21 demand that AMTSO drop the Standard. I was disappointed to hear NSS Labs' position that  
22 AMTSO could make no change that would be of value to NSS Labs. I was surprised when NSS  
23 Labs then betrayed the confidence of its fellow testers and filed the transcript in this action. This  
24 leads me to the conclusion that NSS Labs' participation in this phone call, and indeed its filing of  
25 this lawsuit, were done with an intent to discourage AMTSO members from participating in the  
26 organization and to damage AMTSO.  
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1 I declare under penalty of perjury that the foregoing is true and correct.  
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3 Dated: March 30, 2020

*Dennis Batchelder*

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